

**U. S. Department of Housing and Urban Development
Federal Housing Commissioner
Office of Insured Health Care Facilities
Commitment for Insurance of Advances
(Section 232)**

**Commitment for
Insurance of Advances
2 Stage, Final (Amended and
Restated) Submittal
Section 232**

**U. S. Department of Housing
and Urban Development**
Office of Healthcare Programs

OMB Approval No. 9999-9999
(exp. mm/dd/yyyy)

Public reporting burden for this collection of information is estimated to average 0.5 hours. This includes the time for collecting, reviewing, and reporting the data. The information is being collected to obtain the supportive documentation which must be submitted to HUD for approval, and is necessary to ensure that viable projects are developed and maintained. The Department will use this information to determine if properties meet HUD requirements with respect to development, operation and/or asset management, as well as ensuring the continued marketability of the properties. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. No confidentiality is assured.

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AMENDED AND RESTATED

Please indicate the submission type:

- ☐ Section 232 Substantial Rehabilitation
☐ Section 232 New Construction

FHA Project No.: _____
Project Name: _____
Project Address: _____

(Mortgagee)

(Name of Mortgagor)

(Address)

(Address)

(City, State and Zip Code)

(City, State and Zip Code)

This Amended and Restated Commitment for Insurance of Advances (this "Commitment") amends and restates in its entirety the Commitment for Insurance of Advances issued by the Secretary with respect to the Project dated _____ (the "Original Commitment Date"). The effective date of this Commitment shall be the Original Commitment Date.

We understand that you, as Mortgagee, have agreed to make a loan to _____ (hereinafter called the "Mortgagor"), in an amount not exceeding the sum of _____ and no/100 Dollars ~~\$(_____)~~ to be secured by a credit instrument and security instrument (hereinafter jointly called the "Mortgage") covering real property with existing building(s) (if any) thereon identified above (hereinafter called the "Project"), as shown on the legal description of the property attached hereto as **Exhibit A.**

It is your intention to present the said Mortgage to the Federal Housing Commissioner acting herein on behalf of the Secretary of Housing and Urban Development (the "Secretary") for mortgage insurance under the provisions of Section 232 of the National Housing Act (the "NHA") and the Regulations thereunder ~~now~~ in effect on the Original Commitment Date (the "Regulations").

The Secretary hereby agrees to insure said Mortgage under the provisions of the NHA

and the Regulations upon the following conditions:

- 1.(a) The Mortgage shall bear interest at the rate of _____ percent (~~_____ %~~) ~~_____ %~~ per annum during the construction period and at the rate of _____ percent (~~_____ %~~) ~~_____ %~~ per annum thereafter. As used herein, construction period means the period beginning on the date of Initial Endorsement and ending on the cost-cut off date approved by the Secretary (or such other date as may be approved by the Secretary). ~~11~~. Note: Any change in the interest rate will require reprocessing of the mortgage insurance application and amendment of this Commitment prior to Initial Endorsement.
 - (b) Payments of interest only on the outstanding principal balance shall be due and payable on the first day of each month, commencing not later than the first day of the month following initial endorsement of the Mortgage for insurance ("Initial Endorsement") and continuing through the first day of the month immediately prior to the date on which the first monthly payment of principal is due.
 - (c) The first payment to principal (commencement of amortization) shall be due on the first day of the _____ month following the month in which Initial Endorsement occurs. The Mortgage shall be payable on a level annuity basis by ~~_____ 480~~ monthly payments of principal and interest in the amount of \$ _____ each. Monthly principal and interest payments due prior to, or on the first day of the month after, final endorsement of the Mortgage ("Final Endorsement") shall be adjusted to the extent that the full principal amount of the Mortgage has not yet been advanced in order for such payments to equal the sum of (i) interest on the outstanding principal balance plus (ii) the regularly scheduled principal amortization payments due on the Mortgage assuming that the full amount thereof has been advanced. The maturity and final payment date shall be ~~_____ 39~~ years and ~~_____ 11~~ months following the due date of the first payment to principal (commencement of amortization).
- 2.(a) A project shall be constructed (which term shall be deemed to include substantially rehabilitated, if applicable) on the mortgaged property in accordance with a construction contract approved by the Secretary and with the Drawings and Specifications filed with the Secretary and designated as _____, FHA Project No. _____, dated _____ and identified in the Index attached hereto as **Exhibit B**. The Drawings and Specifications, which include "General Conditions of the Contract for Construction" (AIA Document A201) and "Supplementary Conditions of the Contract for Construction" (HUD-2554), shall be identified in a manner acceptable to the Secretary by the following parties or their authorized agents: Mortgagor, design architect, architect administering the construction contract, contractor and, if applicable, the contractor's surety. The Secretary encourages mortgagors to utilize energy saving devices and methods.
 - (b) At or prior to Initial Endorsement, there shall be submitted to the Secretary assurance of completion of the Project in the form of (i) payment and performance bonds, each in the amount of 100% of the construction contract amount, in form

and substance satisfactory to the Secretary and issued by a surety acceptable to the Secretary, or (ii) a completion assurance agreement reflecting a deposit thereunder of not less than ~~_____ % [15% or 25%, as applicable]~~ 15.0% of the construction contract amount, in form and substance satisfactory to the Secretary.

(c) The Mortgagor shall cause the Project to be equipped in order for the Project to operate in accordance with applicable laws, such equipment to include, but not be limited to, the major moveable equipment listed in **Exhibit C** attached hereto.

3. The credit instrument and the security instrument to be insured shall be in the forms prescribed by the Secretary for use in connection with loans insured under Section 232 of the NHA in the locality in which the property is situated. In addition, the Mortgagor (and, if applicable, the lessee/operator of the Project) shall provide a security agreement and UCC financing statements granting a first lien security interest in such tangible and intangible personal property related to the Project as may be required by the Secretary (subject only to liens for taxes and assessments which are not delinquent and such other liens as may be approved by the Secretary).

4.(a) Prior to Initial Endorsement, the Mortgagor shall present to the Secretary a title policy in conformity with the Regulations which shall show that title to the property (or, if approved by the Secretary, a leasehold estate therein) on the date of Endorsement is vested in the Mortgagor free of all exceptions to title (either junior or prior to said Mortgage), except said Mortgage and such other exceptions to title as are specifically determined to be acceptable by the Secretary. Said title policy shall (i) by its terms inure to the benefit of the Mortgagee and/or the Secretary of Housing and Urban Development, as their interests may appear and (ii) unless otherwise approved by the Secretary, be on the ALTA Loan Policy 2006 Form and include ALTA Form 8.1-06, 9-06 (or 9.3-06), ALTA 17-06 and ALTA 22-06 endorsements and an endorsement deleting the arbitration clause. Said policy may contain a pending disbursements clause if customary in the area in which the Project is located.

(b) If required by the Secretary, prior to Initial Endorsement, and again prior to Final Endorsement, the Mortgagor shall present to the Secretary a survey of the Project in form and substance satisfactory to the Secretary. At the request of the Secretary or the Mortgagee, such survey will be updated from time to time during construction to show that the improvements on the site have been erected solely upon the mortgaged property and within applicable building restriction lines, if any, and do not encroach upon or overhang any land not covered by the Mortgage or any easement or right-of-way.

5. The Mortgagor must possess the powers necessary for operating the Project and meeting all the requirements of the Secretary for insurance of the Mortgage. Prior to Initial Endorsement, there shall be delivered to the Secretary and the Mortgagee (a) copies of ownership entity documentation that complies with applicable requirements of the Secretary, including a copy of the instrument under which the Mortgagor entity is created (unless the Mortgagor is an individual), together with

copies of all instruments or agreements necessary under the laws of the applicable jurisdiction to authorize execution of the Mortgage and the other closing documents, and (b) a Regulatory Agreement in the form prescribed by the Secretary for use in connection with loans insured under Section 232 of the NHA (the "Regulatory Agreement"). Such Regulatory Agreement shall provide, among other things, for the establishment of a Reserve Fund for Replacements (the "Reserve Fund for Replacements") under the control of the Mortgagee by payment of \$_____ per annum, to be accumulated monthly at the rate of \$_____ per month (*rounded to the nearest dollar*), commencing on the date of the first payment to principal as established in the Mortgage unless a later date is agreed upon by the Secretary. In addition to the per annum amount required to be accumulated monthly under the control of the Mortgagee for the Reserve Fund for Replacements, there shall be an initial deposit in the amount of not less than \$_____ made to the Reserve Fund for Replacements by the Mortgagor at the time of Initial Endorsement.

The amount of the annual deposits to the Reserve Fund for Replacements shall be subject to change in accordance with the requirements of the Secretary. In connection therewith, every ten years the Mortgagee shall obtain a new Project Capital Needs Assessment ("PCNA") for the Secretary to evaluate. The cost of each such PCNA report may be paid from the Reserve Fund for Replacements. The Mortgagee's Certificate to be delivered prior to Initial Endorsement and the Regulatory Agreement shall each include a statement confirming the requirement for such periodic PCNA reports.

6. At or before Initial Endorsement, the Mortgagee or its nominee shall collect the following escrows (in the form of cash and/or, except with respect to clause (c) below, one or more unconditional and irrevocable letters of credit) to be applied to the following items:
 - (a) Funds for application to taxes, mortgage insurance premiums, property insurance premiums and assessments required by the terms of the Mortgage accruing subsequent to Initial Endorsement, and not included in the proceeds of the Mortgage in the amount of \$_____ - (Working Capital).
 - (b) Funds for application to the cost of purchasing minor moveable equipment for use in Project operations in the amount of \$_____.
 - (c) Funds required over and above Mortgage proceeds for completion of the Project in the amount of \$_____. This sum represents the difference between the Secretary's estimate of the total cash required for carrying charges, financing, and for construction of the Project, including contractor's fees and overhead, architect's fees, and other fees, and the maximum amount of the Mortgage to be insured. These funds may be reduced by (i) so much of the contractor's fees up to a maximum of \$_____, as the closing documents show are not to be paid in cash and (ii) amounts that have been prepaid by or on

behalf of the Mortgagor, as evidenced by a certification of the Mortgagor.
(Front Money Escrow)

- (d) Funds for application to the costs of off-site improvements in the amount of \$_____, and demolition in the amount of \$_____.
- (e) Funds in the amount of \$_____ for application to the expenses of the Project beginning on the later of (i) the date on which all or part of the Project has received a certificate of occupancy or (ii) the date on which residents are first occupying units/beds in the Project and ending on the later of (1) ~~12~~ months after the date of Final Endorsement or (2) a determination by the Secretary that the Project has achieved sustaining occupancy and positive cash flows for a period of at least 90 days.— (Initial Operating Deficit)

At Initial Endorsement, the Mortgagee shall deliver to the Secretary a Mortgagee's Certification evidencing the collection of the amounts set forth in this paragraph. All funds deposited with the Mortgagee or its nominee under this paragraph shall be held and disbursed by the Mortgagee or its nominee in accordance with the applicable requirements of the Secretary.

- 7.(a) Approval of advances of Mortgage proceeds in accordance with the Building Loan Agreement (Form HUD-92441) must be obtained on a form prescribed by the Secretary prior to the date of each advance to be insured. A Contractor's Prevailing Wage Certificate shall be filed with the request for approval of each advance which includes a payment for construction costs. The Secretary's execution of applications for insurance of advances of mortgage proceeds (Form HUD-92403) shall be required only for advances made at Initial Endorsement or Final Endorsement and for advances of all or part of the contractor's retainage, and the Mortgagee shall have the authority to approve all other advances of Mortgage proceeds on behalf of the Secretary.
 - (b) During the course of construction, the Secretary and his representatives shall at all times have access to the property and the right to inspect the progress of construction, and an inspection fee in the amount of \$_____ shall be paid at or before Initial Endorsement. The inspection of construction by a representative of the Secretary shall be only for the benefit and protection of the Secretary.
 - (c) Upon completion of the Project in accordance with the Drawings and Specifications, the credit instrument will be finally endorsed for insurance to the extent of the advances of Mortgage proceeds approved by the Secretary, subject to reduction as provided in the Regulations.
8. Any change in the Drawings and Specifications or in the conditions upon which this Commitment is based, which may occur after the date hereof, shall be explained in writing, or in a supplementary application if required by the Secretary, and must be approved by the Secretary prior to Initial Endorsement. Any such change occurring subsequent to Initial Endorsement that requires the Secretary's approval under this

paragraph must be brought to the attention of the Secretary immediately upon occurrence, and must be approved by the Secretary prior to the date on which the Secretary is requested to approve any further advance for insurance. Changes in the Drawings and Specifications which result in any net construction cost increase, or will, change the design concept, or will result in a net cumulative construction cost decrease of more than 2% of the contract amount may be effected only with the prior written approval of the Mortgagee and the Secretary. The Secretary's approval of any change described above may be subject to such conditions and qualifications as the Secretary in his/her discretion may prescribe.

9. It is a condition of this Commitment that any change in ownership upon which this Commitment was predicated must be indicated in writing by the Mortgagor and such request must be approved in writing by the Secretary. Any principals of the Mortgagor or lessee/operator which are added prior to Initial Endorsement and which were not disclosed in the mortgage insurance application shall be subject to the Secretary's credit review and previous participation clearance before Initial Endorsement. Project principals have been identified to be relied on for financial capacity. Withdrawal of any individual/firm relied on for financial capacity requires prior approval by the Secretary. In addition, withdrawal of such individual/firm prior to Initial Endorsement could result in the Secretary declaring this Commitment null and void.
10. Upon Initial Endorsement, the Mortgagee shall pay to the Secretary in advance, a mortgage insurance premium equal to ~~—~~0.57% of the principal amount of the Mortgage to cover the first mortgage insurance premium and shall continue to make payments thereafter as required by the aforesaid Regulations.
11. This Commitment shall expire 60 days from the date hereofon which this Commitment is amended and restated unless extended by the Secretary. Upon such expiration, all rights and obligations of the respective parties shall cease. Prior to any extension of this Commitment, the Secretary may, at his/her option, reexamine this Commitment to determine whether it shall be extended, shall be extended in the same amount, or shall be amended to include a lesser amount.
12. A request for the reopening of this Commitment received within 90 days of its expiration must be accompanied by the reopening fee prescribed by the Regulations.
13. The Mortgagor, lessee/operator and/or management agent, as applicable, shall maintain professional liability insurance in accordance with the requirements established by the Secretary. The Mortgagor shall annually provide, or cause to be provided, to the Secretary a certification of compliance with the Secretary's professional liability insurance requirements. The Regulatory Agreement executed by the Mortgagor must require compliance with these requirements.
14. If the Project is subject to an operating lease, such lease must (a) incorporate subordination language approved by the Secretary, (b) provide for lease payments

sufficient to cover monthly principal and interest payments under the Mortgage, escrows required under the Mortgage and deposits to the Reserve Fund for Replacements required by the Regulatory Agreement, and (c) otherwise comply with applicable requirements of the Secretary. In addition, the lessee/operator must execute and deliver an Operator Regulatory Agreement in the form specified by the Secretary.

15. Any accounts receivable financing obtained by the Mortgagor or lessee/operator with respect to the Project will be subject to approval by the Secretary and the Mortgagee.
16. All financing arrangements (other than the Mortgage and any other mortgage insured by the Secretary), including repayment obligations and other secondary financing, and occupancy restrictions must be fully disclosed to, and approved by, the Secretary and must comply with the Secretary's requirements applicable to loans insured under the Section of the NHA applicable to the Mortgage.
17. Any interest savings resulting purely from a differential between the processed interest rate and the actual final interest rate may not be construed as excess funds offsetting costs in other categories at the time of cost certification. To the extent that the amount of the Mortgage set forth in this Commitment has been determined based upon replacement cost, any such savings must be applied as a reduction in the amount of the Mortgage.
18. Pursuant to Form HUD-2880, this Commitment is based on Mortgagor certifications regarding the absence or use of Tax Credits or Other Government Assistance. If the Mortgagor's intentions subsequently change, and Tax Credits or Other Government Assistance is applied for or eliminated, Form HUD-2880 must be updated, and the Secretary reserves the right to unilaterally alter any and all of his/her underwriting determinations, or revise the terms of the mortgage insurance commitment or regulatory agreement accordingly.
19. This Commitment is conditioned upon and shall not be enforceable against the Secretary until and unless all conditions to the endorsement stated herein have been satisfied or waived by the Secretary.
20. The Secretary reserves the right to examine the Mortgagee's file materials related to the underwriting of the Mortgage at any time during the ten-year period following Initial Endorsement. If there is evidence of fraud or misrepresentation by the Mortgagee, the Secretary reserves his/her legal rights under the contract of mortgage insurance and Mortgagee Review Board requirements. The Mortgagee agrees to retain, in accessible files, all materials related to the underwriting of the Mortgage for a period of ten years, even though the Mortgage itself may be sold to another entity.
21. To the extent that the Mortgagor has not done so prior to Initial Endorsement, the Mortgagor must provide to the Secretary evidence/documentation from the appropriate local/state licensing authorities showing approval or conditional

approval for the operation of the Project (or applicable portions thereof) prior to occupancy of the Project (or applicable portion thereof).

22. At least 10 calendar days prior to Initial Endorsement, an Estimated Progress Schedule of Work must be submitted by the general contractor for review and approval by the Secretary. The progress schedule is required by Article 3.10.1 of the AIA General Conditions, which is an integral part of the FHA Construction Contract, Form HUD-92442 or 92442A.
23. Should any asbestos containing materials (ACMs) or environmental contaminants be encountered in the course of demolition or construction, they are to be handled in accordance with all applicable federal, state, and local requirements.
24. Prior to Initial Endorsement, both the design architect and supervising architect shall provide evidence of errors and omissions (liability) insurance and shall agree to maintain errors and omissions through acceptance of the 12-month warranty inspection.
25. Attention is directed to the Regulations covering the assignment or the transfer of the insured mortgage, in whole or in part, and the transfer of the rights, privileges, and obligations under the contract of mortgage insurance.
26. This Commitment is subject to the conclusions stated on the attached forms: HUD-92264-HCF, Health Care Facility Summary Appraisal Report; HUD-92264A, Supplement to Project Analysis; HUD-92447, Property Insurance Requirements; HUD-92329, Property Insurance Schedule, HUD-2328, Contractors' and/or Mortgagor's Cost Breakdown, and HUD-92438, Underwriting Summary.
27. The mortgagor(s), its contractors and subcontractors, shall comply with all applicable Federal labor standards provisions as expressed in the Supplementary Conditions of the Contract for Construction (HUD-2554), in connection with the construction of said Project.
28. This Commitment is
 - ☐ Subject to the attached Special Conditions ~~numbered 1~~lettered through attached hereto.
 - ☐ Not subject to any Special Conditions.

Attached to this Commitment is a form closing checklist identifying documents required for loans insured under Section 232 of the NHA. The Mortgagee or its counsel shall revise the form closing checklist to conform to the requirements of this Commitment. Draft closing documents, conforming to the terms of this Commitment, must be submitted not less than 15 business days prior to Initial Endorsement. This Commitment and exhibits referred to herein together with the applicable Regulations constitute the entire agreement among the parties, and acceptance of the terms hereof is evidenced by the signature of the Mortgagor and Mortgagee upon the lines provided

below. Please return one original of this Commitment signed by the Mortgagee and the Mortgagor within 10 business days of the date of the Secretary's execution of this Commitment.

SECRETARY OF HOUSING AND URBAN DEVELOPMENT
BY: FEDERAL HOUSING COMMISSIONER

By:

Authorized Agent

By:

Original Commitment Date:

Authorized Agent Amended
and Restated on:

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The above Amended and Restated Commitment for Insurance of Advances, including Special Conditions (if applicable), is hereby accepted by the undersigned, and we hereby agree to be bound by the terms hereof. The undersigned acknowledge and agree that the above Amended and Restated Commitment for Insurance of Advances amends and restates in its entirety the Commitment for Insurance of Advances previously issued by the Secretary with respect to the Project.

Date: _____

MORTGAGOR: _____

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Name: _____

Title: _____

Date: _____

By: _____

MORTGAGEE

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By: _____

Name: _____

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Title: _____

MORTGAGEE:

Date: _____

By: _____

Name: _____

Title: _____

Attachments:

- Special Conditions, if applicable

Revision Date: ~~12/29/08~~ 04/2010

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- Exhibit A: Legal Description
- Exhibit B: Index to Drawings and Specifications
- Exhibit C: List of Major Moveables (if applicable)
- HUD 2328, Contractor's and/or Mortgagor's Cost Breakdown
- Form HUD-92264-HCF and Form HUD-92264A
- Form HUD-92329 and Form HUD-92447

• ~~Form HUD-92438~~

• ~~Closing Checklist~~

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